

REMARKS

Reconsideration and allowance of the claims of the present application are respectfully requested. Claims 1-24 are presently pending, Claims 12-24 have been withdrawn pursuant to a restriction requirement, and Claim 19 has been cancelled without prejudice.

Applicants have amended Claims 1 and 2 in a manner as shown above. Support for the amendments is found at page 4, lines 27 to 30 of the specification, and in originally filed Claims 2 and 3. Since no new matter is introduced entry thereof is respectfully requested.

In the Official Action, Claims 1 – 7, 10 and 11 stand rejected under 35 U.S.C. § 102(b) as allegedly anticipated by Cerdá et al. (US Patent 5,514,666).

Concerning the § 102(b) rejection, it is axiomatic that anticipation under § 102 requires that the prior art reference disclose each and every element of the claim to which it is applied. In re King, 801 F.2d, 1324, 1326, 231 USPQ 136, 138 (Fed. Cir. 1986). Thus, there must be no differences between the subject matter of the claim and the disclosure of the prior art reference. Stated another way, the reference must contain within its four corners adequate direction to practice the invention as claimed. The corollary of the rule is equally applicable: Absence from the applied reference of any claimed element negates anticipation. Kloster Speedsteel AB v. Crucible Inc., 793 F.2d 1565, 1571, 230 USPQ 81, 84 (Fed. Cir. 1986).

Applicants submit that the claims of the present application, as amended herein, are not anticipated by the disclosure of Cerdá et al. since the applied reference does not disclose the presently claimed protein powder composition comprising from about 3 to about 15 % pectin (weight/weight of the protein content) and the pectin having a degree of esterification $\geq 50\%$.

Specifically, Applicants submit that Cerdá et al. teach a protein powder composition comprising 30% to 35% pectin (weight/weight of the protein content). See column

3, lines 53 – 57; column 7, lines 31-33; and column 8, lines 20-22. Furthermore, with respect to the ratio of pectin to protein (1% to 200%) as disclosed in Cerdá et al., see column 3, lines 14-18, Applicants submit that such ratio is directed to the process of preparation (see step (a) at column 2, lines 37 – 45), rather than to the final product generated from that process. In this regard, attention is directed to the preparation process disclosed in Cerdá et al. where one or more solvents are added to the initial pectin/protein mixture, so co-precipitation takes place, but this process apparently does not precipitate pectin and protein to the same degree (see column 2, lines 37 – 45). Therefore, the ratio of pectin to protein (1% to 200%) indicated for the process of preparation in Cerdá et al. does not indicate anything about the ratio of pectin to protein in the end product, which is the protein powder composition and the subject matter claimed.

In conclusion, Cerdá et al. teach a protein powder composition comprising 30% to 35% pectin (weight/weight of the protein content), whereas the present claims are directed to a protein powder composition comprising from about 3 to about 15 % pectin (weight/weight of the protein content).

The foregoing remarks clearly demonstrate that the applied reference does not teach each and every aspect of the claimed invention, as required by King and Kloster Speedsteel; therefore the claims of the present application are not anticipated by the disclosure of Cerdá et al. Applicants respectfully submit that the instant § 102 rejection has been obviated and withdrawal thereof is respectfully requested.

Furthermore, Claims 8 and 9 stand rejected, under 35 U.S.C. § 102(b) as allegedly anticipated by, or in the alternative, under 35 U.S.C. § 103(a) as allegedly obvious over Cerdá et al. with evidence allegedly provided by May (May, C.D. 2000. Pectins. Phillips et al., Handbook of Hydrocolloids, pp 169-188, Woodhead Publishing).

Specifically, the Official Action contends that although Cerda et al. do not teach that the esterification degree of pectin is above 60% or 70%, such deficiency would be cured either by the teaching of Cerda et al. (pectin having a degree of esterification equal or greater than 50%), or by the teaching of May because May discloses that commercial pectin commonly has a degree of esterification of around 67-73%. See page 172.

In response, Applicants submit that since Claims 8 and 9 are dependent from Claim 1, as presently amended, these claims are patentably distinct from Cerda et al. for the same reasons as discussed above in respect to the §102(b) rejection of Claims 1 – 7, 10 and 11. Since the secondary reference does not cure the deficiency of the primary reference, which is Cerda et al., the combination of the two references fails to teach or suggest the present application.

In view of the above remarks, Applicants submit that the instant rejection has been obviated; therefore reconsideration and withdrawal thereof are respectfully requested.

Thus, in view of the foregoing amendments and remarks, it is firmly believed that the present case is in condition for allowance, which action is earnestly solicited.

Respectfully submitted,



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